

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

JAN 19 2001

Geralaine Troutelaar Crockett,  
Clerk  
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In Re: )  
JOHN ROBERT MULLINS, ) Case No. 98-50517  
Debtor. ) Chapter 7

JAN 19 2001  
~~JUDGMENT ENTERED ON~~

ORDER ON TRUSTEE'S OBJECTION TO AMENDED EXEMPTIONS

This matter came on for hearing before the undersigned on December 5, 2000, upon the Trustee's Objection to Debtor's Amendment of Schedule C and Claim for Exemption. Based on that hearing and the case record, the Court makes the following:

**FINDINGS OF FACT**

John Robert Mullins ("debtor" or "Mullins") filed a petition for relief under Chapter 7 of the United States Bankruptcy Code in this Court on April 17, 1998. The debtor held interests in many closely held businesses and trusts involving members of his family on the petition date. Among these interests, the debtor owned 100% of the stock of a corporation known as Mulco Leasing, Inc. ("Mulco"). Unfortunately, in his schedules Mullins did not disclose his ownership interest in Mulco or the fact that Mulco was in its own bankruptcy proceeding in the Western District of Virginia (although disclosure of this information is required in a personal bankruptcy filing).

Barrett Crawford was appointed Chapter 7 Trustee in the debtor's case on April 21, 1998. The Trustee learned of Mulco's existence and of its separate bankruptcy case for the first time at

the Meeting of Creditors in this proceeding on June 1, 1998. Shortly thereafter, on June 12, 1998, the debtor amended his petition to disclose his ownership of Mulco Leasing. In his amended Schedule B, the debtor listed the Mulco stock with an "unknown" value. However, the debtor did not amend his Schedule C to claim that interest as exempt.<sup>1</sup>

As noted above, Mullins had an uncommonly wide range of prepetition business interests, ranging from car dealerships to family trusts. The Trustee and Mullins' creditors, including Ford Motor Credit Corporation,<sup>2</sup> had numerous questions about his financial affairs in the bankruptcy case. As a result, the § 341 Meeting of Creditors was continued on several occasions and discovery was initiated. Simultaneously, the time for objecting to the debtor's discharge or seeking exceptions to discharge under § 727 and/or § 523 was extended. This process was made more difficult by the debtor's apparent health problems, which limited his availability for depositions.

By 1999, both the Trustee and Ford Motor Credit had filed discharge objections against Mullins, as well as actions to recover property from his relatives and related companies. Nearly a year later, in November of 1999, Mullins asked leave to amend his

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<sup>1</sup> Schedule B of the bankruptcy petition itemizes the debtor's personal property, while Schedule C lists any property the debtor claims as exempt under applicable state and federal law.

<sup>2</sup> Ford Motor Credit Corporation was pursuing Mullins and his businesses before bankruptcy in civil litigation in the U.S. District Court.

schedules again. In this amendment, Mullins sought to (a) schedule, (b) claim an exemption in, and (c) demand abandonment from the estate of, an alleged counterclaim against Ford Motor Credit. As with the Mulco stock, this counterclaim had not previously been disclosed (or exempted) in Mullins' bankruptcy petition or in the amended schedules. The motion to amend was allowed by Order entered February 8, 2000.

Meanwhile, Mulco's bankruptcy case in Virginia was largely dormant. After beginning as an involuntary Chapter 11 proceeding in December of 1997, the case subsequently converted to a "no-asset" Chapter 7. One adversary proceeding was pending against the corporate debtor, but the plaintiffs (two banks) had encountered discovery problems similar to those faced by creditors in Mullins' individual case and little progress had been made.

In order to participate in a Mulco hearing, Mullins' Chapter 7 Trustee obtained an *ex parte* Order from this Court on October 5, 2000, noting his control over the debtor's stock interest in the company. This was hardly controversial, since absent their exemption, such interests are property of the bankruptcy estate under 11 U.S.C. § 541.

However, the Trustee was unaware that on October 2, 2000, the debtor had amended his Schedule C to claim the Mulco stock as

exempt under N.C. Gen. Stat. § 1C-1601.<sup>3</sup> The amendment listed the property's market value as \$1.00 and claimed this amount as exempt. Only after arriving at the October 5<sup>th</sup> hearing in Virginia did the Trustee learn of Mullins' amendment. He had not been served with the amendment previously. The Virginia bankruptcy court, upon learning of the conflict between Mullins and the Chapter 7 Trustee over control of Mulco, chose to abstain from further involvement in these proceedings. Instead, any pending issues in the Mulco case were transferred to this Court for disposition.

Now, Mullins' Trustee objects to the amended exemption on the grounds that the debtor's interest in Mulco should have been disclosed in the original petition, and that the subsequent filings have failed to properly value the stock. The Trustee also seeks sanctions against the debtor and his counsel, including his costs and fees for objecting in this matter and for attending the abortive hearing in Virginia.

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<sup>3</sup> North Carolina has opted out of the federal exemption scheme set forth in 11 U.S.C. § 522(d). See 11 U.S.C. § 522(b)(2). Therefore, the bulk of the exemptions claimed by debtors in this state are found in the various subsections of N.C. Gen. Stat. § 1C-1601. The debtor's October 2, 2000 amendment to his exemptions did not specify the subsection under which he claimed the Mulco stock. Since no other exemption pertains, the Court assumes the debtor intended to claim the stock under the "wildcard" provision, which allows an exemption of "[t]he debtor's aggregate interest in any property, not to exceed three thousand five hundred dollars (\$3,500) in value less any amount of the exemption used under subdivision (1)" (referring to North Carolina's \$10,000 homestead exemption). N.C. Gen. Stat. § 1C-1601(a)(2).

Mullins responds that he has effectively exempted the entire amount of his interest in Mulco.<sup>4</sup> In support of this argument, he notes that exemptions are liberally construed in favor of debtors. In re Barker, 768 F.2d 191 (7<sup>th</sup> Cir. 1985). The debtor adds that he has not exhausted the full amount of exemptions allowed under state law, and that the amended exemption is nonprejudicial to the estate since the value of the Mulco stock is highly speculative due to the company's bankruptcy. He also suggests that the Trustee's involvement in the Mulco case was unnecessary because that proceeding was almost concluded, and as a result the Trustee should not be reimbursed by the debtor or his counsel.

#### CONCLUSIONS OF LAW

The issues before the Court are relatively straightforward. First, the undersigned must decide whether the debtor is entitled to amend his exemption claim to include the Mulco stock. If so, the Court must then determine whether the debtor is entitled to exempt the Mulco stock *in toto*, or, whether the exemption is limited to \$1.00 (the value actually stated in the amendment to Schedule C).

The Court has little difficulty concluding that the debtor must be permitted to amend his petition and exemptions. Bankruptcy

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<sup>4</sup> The dispute between Mullins and his Trustee over control of Mulco goes beyond whether Mullins can claim a given dollar amount in exemptions. Mulco is a defendant in the Trustee's lawsuits. If the Trustee controls the stock, he also controls the company's attorney-client privilege - making it much easier for him to obtain corporate information than through discovery.

Rule 1009 states that a "voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a); See LAWRENCE P. KING, COLLIER ON BANKRUPTCY ¶ 1009.02 (15<sup>TH</sup> ed. rev. 1996). This case is not yet closed. Barring some extraordinary circumstances going beyond the time delay, the debtor is entitled to amend, and the Trustee is likewise entitled to timely object. See Fed. R. Bankr. P. 4003(b); Bernard v. Coyne (In re Bernard), 40 F.3d 1028 (9<sup>th</sup> Cir. 1994), cert. denied, 514 U.S. 1065, 115 S.Ct. 1695 (1995); Matter of Kazi, 985 F.2d 318 (7<sup>th</sup> Cir. 1993). This does not endorse Mullins' failure to disclose the stock previously. The Court is concerned with his tendency to schedule assets only when it is advantageous to do so. However, this is a discharge issue that will be addressed in the adversary proceedings.

As to the second inquiry, the Court concludes that the debtor's exemption in the Mulco stock is limited to \$1.00 and that the allowed exemption does not remove the entire asset from the bankruptcy estate. In Addison v. Reavis, 158 B.R. 53 (E.D. Va. 1993), *aff'g sub nom.*, In re Grablowsky, 149 B.R. 402 (Bankr. E.D. Va. 1993), *aff'd sub nom.*, In re Grablowsky, 32 F.3d 562 (4<sup>th</sup> Cir. 1994) (unpublished per curiam), the debtors in two consolidated cases attempted to exempt separate partnership interests. The debtors valued their interests at \$1.00 and \$10.00, respectively. After a careful review of the identical issues presented in this

case, the District Court in Addison held that the debtors' exemptions were limited to the precise dollar values listed in their petitions.

That court noted that while the debtors could have amended their original exemptions up to certain statutory maximums, they chose not to do so. Therefore, they apparently intended to claim only the nominal values stated in their Schedule C forms. 158 B.R. at 57, 59. Furthermore, to the extent that the debtors' nominal claims created ambiguity as to the amounts they intended to exempt, any such ambiguities were to be construed against the draftsmen. Id. at 59-60. Therefore, the debtors' exemptions could not exceed the \$1.00 and \$10.00 amounts stated in their petitions.

Similarly, in In re Forti, 224 B.R. 323, 324 (Bankr. D.Md. 1998), the Chapter 7 debtors attempted to exempt ownership interests in a corporation and limited liability company under Maryland's general exemption statute. The debtors listed the values of their interests in these entities as "unknown." The trustee objected for fear that the debtors were attempting to claim their entire interests as exempt, over and above certain statutory dollar limitations.<sup>5</sup>

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<sup>5</sup> In Taylor v. Freeland & Kronz, 503 U.S. 638, 112 S.Ct. 1644 (1992), the Supreme Court held that a trustee's failure to timely object to an exemption claim under Bankruptcy Rule 4003 precluded a subsequent challenge, even though the claim exceeded the statutory dollar limit for such exemptions. The Court's holding in Taylor is not at issue in this case, however, since the Trustee made a timely objection to the debtor's amended exemption.

The bankruptcy court determined that when claiming exemptions that are subject to such value limitations, a dollar amount must be assigned to the interest ("The dollar limitation defines the exemption."). Id. at 328. Therefore, the court assigned values to the debtors' interests according to the exemption amounts available to them under Maryland's statutory cap. Importantly, any value of the interests over and above those amounts remained estate assets and could be liquidated by the trustee for the benefit of creditors. Id.

Applying these authorities to the case at bar dictates that the debtor's amended exemption in the Mulco stock is limited to \$1.00. Although at this point no one knows the value of this intangible asset, the debtor is in the best position to estimate its worth. Forti, 224 B.R. at 329. Without evidence of the stock's true value, the Court will not allow the debtor to exempt the entire asset over the Trustee's objection. To do so would impermissibly allow the debtor, through the use of a nominal valuation, to thwart the Trustee's ability to administer this estate. See In re Larson, 143 B.R. 543 (Bankr. D.N.D. 1992) (nominal exemptions in numerous assets did not further fresh start objective but merely served to frustrate trustee's ability to liquidate estate's interest).

Mullins purposefully assigned a negligible dollar value to his stock, and he chose to do so despite the fact that a greater exemption amount was available under the North Carolina wildcard

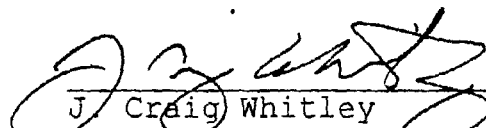


statute. The debtor is now bound by his choice under Addison absent further amendment. Under Forti, the stock (less the \$1.00 of value exempted by the debtor) is an asset of the bankruptcy estate and remains subject to the Trustee's control. See 11 U.S.C. § 541.

Finally, the Court finds no basis on these facts to award sanctions to the Trustee under Bankruptcy Rule 9011 or otherwise.

**THEREFORE, IT IS ORDERED:**

1. The Debtor's Amendment of Schedule C and Claim for Exemption filed October 2, 2000 is ALLOWED.
2. The Trustee's Objection to Debtor's Amendment of Schedule C and Claim for Exemption is DENIED.
3. The Trustee's Motion for Sanctions is DENIED.

  
J. Craig Whitley  
United States Bankruptcy Judge